***THE HON'BLE DR JUSTICE G. YETHIRAJULU**

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+W.P.No. 17529 If 1992

% 28/02/2006

#Between:

1. The District Employment Officer (FAC), District Employment Exchange, Visakhapatnam

..... APPELLANT

AND

$1. Chairman & Presiding Officer, Industrial Tribunal cum

Labour Court, Visakhapatnam.

.....RESPONDENTS

! COUNSEL FOR THE APPELLANT: Govt. Pleader for Edn.

^ COUNSEL FOR THE RESPONDENTs

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- Head Note:

? CITATIONS:

1. 1998 (2) LLJ (SC) 15.

THE HON'BLE DR. JUSTICE G. YETHIRAJULU

W.P.No. 17529 of 1992

This is a writ petition filed by the State represented by the District Employment Officer, Visakhapatnam seeking to declare that the award passed by the Industrial Tribunal, Visakhapatnam in I.D.No.175/89, dated 30-4-1992, as illegal and for a consequential direction to set aside the said award.

The 2nd respondent was appointed as contingent watchman in the petitioner-Establishment on 14-11-1979 and the salary is being paid from contingencies. In the year 1987 by memo dated 5-8-1987 the 2nd respondent severely warned for having attended to his duties in a drunken state and further by memo dated 2-9-1987 he was called upon to show cause as to why his services could not be terminated for having taken Rs.40/- and Rs.30/- respectively from two persons as illegal gratification. The 2nd respondent admitted his guilt and submitted that he will conduct himself property in future. Subsequently complaints were received from others that the 2nd respondent collected Rs. 1200/- and Rs.350/- from them by way of gratification for renewal and registration. Thereupon a show cause notice was issued on 8-9-1988. The 2nd respondent filed his explanation dated 12-9-1988 denying the charges framed against him and after consideration of his explanation his services were terminated with effect from 25-11-1988. Questioning the same the 2nd respondent filed I.D.No. 175/89 before

the Industrial Tribunal-cum-Labout Court, Visakhapatnam. The Labour Court entertained the I.D. and ultimately passed an award on 30-4-1992 directing the management for reinstatement of the petitioner into service with 50% back wages from the date of his removal from service till the date of passing of the award and full wages from the date of passing of the award till the date of reinstatement. The District Employment Officer, being aggrieved by the order in the I.D. approached this court through this writ petition questioning the maintainability of the I.D. and the jurisdiction of the Industrial Tribunal.

The learned counsel for the petitioner submitted that the District Employment Exchange is a Government Department and it is not an industry and therefore an industrial dispute cannot be raised under the Industrial Disputes Act before the Labour Court or Industrial Tribunal. Therefore the Industrial Tribunal has no jurisdiction to pass any award and that the impugned award passed by the Industrial Tribunal is liable to be set aside. In support of his submission the learned counsel for the petitioner relied upon a decision in ***H.K.VIDYARTHI & ORS. Vs. STATE OF BIHAR & ORS (1998 (2) LLJ (SC) 15)***, wherein the Supreme Court observed that "every department of the Government cannot be treated to be "industry". When the appointments are regulated by the statutory rules, the concept of "industry" to that extent stands excluded."

It is an undisputed fact that the 2nd respondent was engaged as a contingent employee in the Employment Exchange, which is purely a Government Department and as such it will not come within the definition of "industry". When once it is not an industry, the jurisdiction of the Industrial Tribunal is excluded. If at all there is any grievance the 2nd respondent ought to have approached A.P. Administrative Tribunal, but not the Industrial Tribunal.

In the light of the above observations, I find sufficient force in the writ petition and I am inclined to allow the same by setting aside the award passed in I.D.No.175/89 on 30-4-1992 by the Industrial Tribunal.

In the result the writ petition is allowed. The award dated 30-4-1992 passed by the Industrial Tribunal in I.D.No. 175/89 directing reinstatement of the 2nd respondent into service with 50% back wages is set aside. No order as to costs.

28th February, 2006

BJ/

THE HON'BLE DR. JUSTICE G. YETHIRAJULU

W.P.No. 17529 of 1992

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Dated: 28th February, 2006.

Between:

The Dist. Employment Oficer (FAC), Dist. Employment Exchange,

Visakhapatnam. …….. Petitioner.

And

Chairman & Presiding Officer, Industrial Tribunal cum Labour

Court, Visakhapatnam & Others. ……. Respondents.

Counsel for the Petitioner: G.P. for Edn.

Counsel for Respondents.: